

Civil Revision Applications No.42/97 to 46/97.

Date of decision: 10.1.1997.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. H.M. Parikh for Mr. M.C. Shah, advocate for the petitioners.

Mr. Jashwantbhai Punjabhai Patel, party in person for respondent Nos.1/1 to 1/4.

Respondent No.2 -deleted.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

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January 10, 1997.

Oral common judgment:

Since the orders under challenge so also the parties are common in all the above revision applications, they are heard together and decided by this common judgment.

Rule. Mr. Jashwantbhai Punjabhai Patel, respondent No.1/2, who appears as party in person and power of

attorney holder respondents No.1/1, 1/3 and 1/4, waives service of Rule. Learned advocate for the petitioners requests for deletion of name of respondent No.2 as he has been joined as a formal party and is not to be affected in any way by the order. Hence, permission is granted. Name of respondent No.2 stands deleted. Mr. Jashwantbhai Punjabhai Patel, respondent No.1/2 appears as party-in-person on behalf of respondent Nos.1/1 to 1/4. He has also filed Caveat. He holds power of attorney on behalf of respondent Nos.1/1, 1/3 and 1/4.

Heard the learned advocate for the petitioners and the respondent Nos.1/1 to 1/4, party in person.

The petitioners' applied for stay of the suit filed by the first respondent against Mohanlal Premjibhai Thakkar and the petitioners as an Insolvency Petition has been filed. Mr. Parikh, learned advocate for the petitioners, has fairly conceded that the Insolvency Petition has not been disposed of and is pending. In other words, order of adjudication as contemplated under Section 28 of the Provisional Insolvency Act has not been passed. Any suit or proceeding pending in any court against a debtor can only be stayed under Section 29 of the Provisional Insolvency Act only after adjudication of the Insolvency Petition; meaning thereby, if an Insolvency Petition has been allowed and the debtor has been adjudicated as insolvent then only the pending suit or proceeding can be stayed, else not. Taking recourse to Section 29 of the Provisional Insolvency Act the learned trial Judge has rightly rejected the petitioners' prayer for staying the suit proceedings. I do not find any illegality or irregularity which can prompt this court to interfere with the said order at this stage. Hence that part of the order rejecting the petitioners' application for stay of the suit proceedings is absolutely in accordance with law and deserves to be confirmed.

Mr. Parikh, learned advocate for the petitioners, has also invited my attention to the earlier portion of the operative part of the order vide which the learned trial Judge has also stayed the proceedings of Insolvency Petition No.1 of 1990 (original Insolvency Petition No.7 of 1982). On the face of it, the trial court has exercised jurisdiction not vested in it because it was neither the prayer of the petitioners to stay the Insolvency Petition nor there was any ground for passing such an order as none of the parties to the application ever advanced any such plea. Mr. Parikh has called my attention to the order passed by this Court in Civil

Revision Application No. 338 of 1983 which expressly said that the Insolvency Petition was to be disposed of as expeditiously as possible and in any case before 30.6.1984. When there is direction from a superior court for expeditious hearing and fixing the deadline for disposal of a matter it is not open to any subordinate court to pass any order which shall run quite contrary to that order. Consequently, the order staying the proceedings of Insolvency Petition No.1 of 1990 deserves to be quashed and set aside.

In the result, the petitions are partly allowed. The orders staying the Insolvency Petition No.1 of 1990 is hereby quashed and set aside and the orders rejecting the petitioners' application for stay of Insolvency Petition is hereby confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.

It is hoped that having regard to the judgment and order passed in Civil Revision Application No. 338 of 1983, top priority will be given for hearing of the Insolvency Petition No. 1 of 1990 and would be disposed of expeditiously.